IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6778 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KRUNAL OIL MARKETING LTD.

Versus

SALES TAX OFFICER (4)

Appearance:

1. Special Civil Application No. 6778 of 2001

MR KH KAJI for Petitioner No. 1

MR MANISH K KAJI for Petitioner No. 1

MR UR BHATT, AGP, for Respondent No. 1-2

..... for Respondent No. 3-4

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 10/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr. U.R. Bhatt, learned AGP waives service of Rule on behalf of respondents No.1 and 2. No direct relief is sought against respondents No.3 and 4. Hence the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioner a registered dealer under the Gujarat Sales Tax Act, 1969 (hereinafter referred to as `the Act') has challenged the order dated 19-7-2001 passed under section 48 of the Act and two provisional attachment orders dated 27-7-2001 under section 48-A of the Act and the assessment order dated 30-7-2001 passed by the Sales Tax Officer (4), City Division 41, Ahmedabad.

3. The petitioner had purchased goods from the persons who were registered as dealers under the Act on the date of relevant transactions in the year 1995-96. The petitioner's case is it was after the aforesaid transactions that the Sales Tax Department cancelled the registration of three dealers retrospectively and that on the basis of such cancellation, the transactions in question have been treated as purchases made by the petitioner from unregistered dealers. The relevant extract of the assessment order is at Annexure `B' to the petition.

4. Mr. Kaji learned counsel for the petitioner has submitted that the assessment order on the basis of cancellation of the registration of the dealers from whom the petitioner had purchased the goods in 1995-96 with retrospective effect cannot result into any prejudicial effect on the transactions in question because the transactions were bonafide and on the date of those transactions, the dealers in question were having registration under the Act. Mr. Kaji has strongly relied on the decision of the Apex Court in State of Maharashtra vs. Suresh Trading Co. 109 STC 439 and also on the decision dated 18-12-1998 of this Court in Special Civil Application No.2648 of 1996 and cognate petitions (Giriraj Sales Corporation vs. State of Gujarat).

5. In response to the notice, Mr. U.R. Bhatt, learned AGP appears for the respondent-authorities and submits that when the registration of the dealers in question was cancelled with retrospective effect, the necessary and logical consequence would be that the petitioner had purchased the goods from unregistered dealers and, therefore, the petitioner has been assessed

on that basis.

6. Having heard the learned counsel for the parties, it appears to us that that the law on this issue has been clearly laid down by the Apex Court in State of Maharashtra vs. Suresh Trading Co. (supra) to the effect that the purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it and that subsequent retrospective cancellation of the registration of the selling dealer can have no effect upon any person who had acted upon the strength of a registration when the registration was current. In Giriraj Sales Corporation vs. State of Gujarat (supra), this Court further clarified that the purchasing dealer will have to be given the benefit of the aforesaid principle provided the transactions in question were bonafide and without any intention to defraud the Government revenue. In the later decision, this Court recorded the following statement made by the learned Additional Advocate General:

"(i) It is submitted that under sub-section (1) of Section 30AA, the Commissioner can cancel the certificate of registration of a registered dealer if he is satisfied that the registered dealer has without entering into a transaction of sale issued to and accepted by another registered dealer a bill or cash memorandum with the intention to defraud the Government revenue or with the intention that the Government may be defrauded. Such a cancellation can be done either prospectively or retrospectively from such date as the Commissioner may, having regard to the circumstances of the case fix.

(ii) The scheme of Section 30AA is that only those dealers referred to in sub-section (1) who give or accept bills without entering into transactions of sale or purchase shall bear the consequence flowing from cancellation of registration regarding payment of tax and other provisions like interest and penalty, subject to proviso (b) of Section 30AA.

(iii) Provisions of provisos (a) and (b) of Section 30AA would not affect further resales of goods purchased from such purchaser.

(iv) If the certificate is cancelled prospectively the provisions of Section 15 would operate and

provisos (a) and (b) of Section 30AA would not be operative.

(v) Irrespective of the fact whether the registration certificate of the vendor or purchaser is cancelled retrospectively, the genuineness of the transactions has to be verified at the time of asessment/reassessment. If transactions are found genuine they will not be affected by section 30AA and provisos thereto."

7. In view of the aforesaid clear stand taken by the State Government in the aforesaid decision which is reiterated by Mr. U.R. Bhatt, learned AGP appearing for the respondents in this petition, it is clear that if the transactions are found to be genuine they will not be affected by section 30AA and provisos thereto.

8. In this view of the matter, the respondents are required to reexamine the case in light of the principles laid down by the Apex Court in State of Maharashtra vs. Suresh Trading Co. (supra) and in light of the aforesaid statement which was recorded by this Court in Giriraj Sales Corporation vs. State of Gujarat (supra). The assessment orders will have to be quashed and set aside and respondent No.1 will have to be directed to take a fresh decision in accordance with law and particularly in light of the aforesaid principles laid down by the Apex Court in State of Maharashtra vs. Suresh Trading Co. 109 STC 439 and in light of the stand of the State Government as recorded in Giriraj Sales Corporation vs. State of Gujarat (Special Civil Application No.2648 of 1996 decided on 18-12-1998).

9. The petition is accordingly allowed. The assessment order dated 30-7-2001 for the assessment year 1995-1996 in case of the petitioner is hereby quashed and set aside with liberty to frame the assessment in light of the principles laid down in the aforesaid two decisions. Consequently, the attachment orders dated 19-7-2001 and 27-7-2001 under section 48 and 48-A respectively of the Act are also quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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